

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-024  
(Filed February 21, 2001)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Loops in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-035  
(Filed February 28, 2001)

Application of The Telephone Connection Local Services, LLC (U 5522 C) for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-031  
(Filed February 28, 2002)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Interoffice Transmission Facilities and Signaling Networks and Call-Related Databases in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-032  
(Filed February 28, 2002)

Application of Pacific Bell Telephone Company (U 1001 C) for the Commission to Reexamine the Costs and Prices of the Expanded Interconnection Service Cross-Connect Network Element in the Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-034  
(Filed February 28, 2002)

Application of XO California, Inc. (U 5553 C) for the Commission to Reexamine the Recurring Costs of DS1 and DS3 Unbundled Network Element Loops in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-03-002  
(Filed March 1, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING  
MOTION FOR EXTENSION, MODIFYING SCHEDULE,  
AND DENYING REQUEST FOR SANCTIONS**

In response to a motion by AT&T Communications of California, Inc. and WorldCom, Inc. (hereinafter "Joint Applicants"), this ruling grants a four-week

extension for cost study filings and modifies the schedule for this consolidated proceeding that we refer to as the 2001/2002 UNE Reexamination.

### **I. Motion for Extension**

In a June 12, 2002<sup>1</sup> ruling in the above-captioned proceeding, the Assigned Commissioner and I set a schedule for this proceeding. On August 30, Joint Applicants filed a motion requesting a four-week extension of the September 20 cost study filing date. Joint Applicants claim the extension is necessary because Pacific had, as of August 30, not yet provided them with customer location and loop count data, which Joint Applicants claim is critical to their cost study filing. Even if Joint Applicants were to receive the information in a timely fashion, they claim that they will need one month to incorporate the information into their cost study filing.

In the alternative, if an extension is not granted, Joint Applicants request an issue sanction precluding Pacific from disputing the customer location and loop count information in Joint Applicants' ultimate cost filings. In addition, Joint Applicants ask for monetary sanctions against Pacific to make them whole for their expenditures on expert consultants in attempting to obtain this information from Pacific.

Pacific opposes the extension request, claiming that it has made every effort to be responsive to Joint Applicants' discovery requests and that it is improper for Joint Applicants to blame Pacific for their inability to meet the September 20<sup>th</sup> cost study filing date. Pacific claims that Joint Applicants have repeatedly modified their discovery requests and that it is unclear what

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<sup>1</sup> All dates are 2002 unless otherwise noted.

information they are seeking that they have not already obtained. Under these circumstances, Pacific opposes Joint Applicants' requests for sanctions.

On September 11, 2002, I held a conference call with all parties in this proceeding to discuss the extension request.

## **II. Discussion**

Joint Applicants' motion and Pacific's response paint two very different pictures of reality. It is hard to know which version of reality is correct. Joint Applicants complain that Pacific has not been forthcoming in responding to discovery obligations, while Pacific implies that Joint Applicants do not know what to ask for and don't know how to use the information they have been given.

What is most troubling about this extension request and Pacific's response is that it appears there is an underlying discovery dispute and it is unclear if that dispute has yet been resolved. Yet, Joint Applicants have never brought a motion to compel before the Commission regarding this dispute, even though they now request sanctions against Pacific for not providing certain information. On the other hand, Pacific itself admits that it shipped certain data to Joint Applicants on September 3, less than three weeks before the September 20 cost study deadline, and close to two months after the data request was made on July 2.

I will grant Joint Applicants' motion to extend the cost study deadline by four weeks, solely based on late date at which all parties agree that Joint Applicants received information from Pacific. I would prefer to give parties a little more time up front to enable them to make an adequate showing with their cost filings, than to open the door to issue sanctions even before the cost filings are in. Because both sides agree that certain customer location and loop count

information was traded as late as September 3, an extension of the September 20 deadline to October 18 is in order. I will err on the side of caution and give the Joint Applicants more time because it is a fact that Pacific, as the incumbent local exchange carrier, has superior access to the information needed by all other parties in this case. Further, any ill effects from a one-month delay in the progress of this case is mitigated by the fact that the interim rates are subject to “true up” once final rates are established in this proceeding.

During the conference call with parties, I was informed that Joint Applicants may now have the information they requested. If this is indeed the case, there should be no need for any further extensions beyond the new October 18 deadline. If Joint Applicants do not have the information they need to make their cost study filing, they should bring a formal motion to compel to the Commission so that any discovery disputes can be resolved accordingly.

Because this ruling grants the four-week extension request, Joint Applicants’ request for issue sanctions against Pacific is denied. I will also deny the request for monetary sanctions because it appears that both sides have spent enormous time and resources in this proceeding and have made great efforts to work cooperatively to resolve discovery issues. Further, because Joint Applicants have not brought the Commission a motion to compel information from Pacific on the underlying discovery dispute leading to this four-week extension request, there is no basis on which to award monetary damages because there has been no ruling on any motion to compel with regard to this issue. Therefore, Joint Applicants’ request for monetary damages is denied.

### **III. Updated Schedule**

Given the four-week extension granted in this ruling, the schedule for this proceeding, originally set in a July 12 ruling, is revised as follows:

October 18, 2002	Filing of cost studies/models, explained and supported through Opening Comments, witness declarations, workpapers, supporting materials, and electronic versions of cost models.
October 29-30, 2002	Technical Workshop on cost studies/models
December 3-4, 2002	Technical Workshop on cost studies/models
December 18, 2002	Reply Comments on cost studies/models
January 21, 2003	Rebuttal Comments on cost studies/models
February 3, 2003	Deadline for motions requesting hearings. Any motions must justify the need for an evidentiary hearing by identifying the material disputed factual issues on which hearing should be held. In addition, any motion should identify the general nature of the evidence the party proposes to introduce at the requested hearing. Any right a party may otherwise have to an evidentiary hearing for the presentation of facts will be waived if the party does not follow the above procedure for a timely request.
February 18, 2003	Ruling on need for hearings and submission of case (if request for hearings not granted).
May 19, 2003	Proposed Decision Issued (if hearings not required).

**If Hearings Required:**

March 3-7, 2003	Evidentiary Hearings
April 4, 2003	Concurrent opening briefs
April 25, 2003	Reply briefs and case submitted
July 25, 2003	Proposed Decision issued

#### **IV. Motion for Confidentiality**

Along with their motion to extend the cost study deadline, Joint Applicants filed a companion motion requesting confidential treatment of one table in the motion requesting the extension. Specifically, Table 1 on page 7 of Joint Applicants' motion contains information concerning Pacific's high capacity loop counts that Pacific considers confidential and proprietary.

The information described above, if revealed, would provide business-sensitive data of Pacific to its competitors. This could place Pacific at an unfair business disadvantage. The material for which confidential treatment is requested has been made available to parties pursuant to non-disclosure agreements. We have granted similar requests for confidentiality in the past and will do so here.

**IT IS RULED** that:

1. The motion of Joint Applicants to extend time for filing its cost studies is granted in part.
2. The previous September 20, 2002 deadline for cost study filings is extended to October 18, 2002, and the remaining schedule for this proceeding is extended as set forth in Section III of this ruling.
3. Joint Applicants' motion requesting issue sanctions and monetary sanctions is denied.
4. Joint Applicants' August 30, 2002 motion to file information under seal is granted for two years from the date of this order. During that period, the information shall not be made accessible or disclosed to anyone other than the Commission staff except upon execution of an appropriate non-disclosure agreement with Pacific Bell Telephone Company (Pacific), or on the further order or ruling of the Commission, the Assigned Commissioner, the Assigned

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Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

5. If Pacific believes that further protection of the information filed under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date of today's protective order.

Dated September 25, 2002, at San Francisco, California.

/s/ DOROTHY J. DUDA

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Dorothy J. Duda  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion for Extension, Modifying Schedule, and Denying Request for Sanctions on all parties of record in this proceeding or their attorneys of record.

Dated September 25, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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